

August 14, 2001

Mr. Michael Spates
Manager
Delivery Operations
U.S. Postal Service
475 L'Enfant Plaza, SW
Room 7142
Washington, DC 20260-2802

Re: USPS Regulation Concerning Commercial Mail Receiving Agencies

Dear Mr. Spates:

By way of introduction, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress. Implicit in our mission to represent small businesses is the duty to ensure that public policies do not erect barriers or harm competition.

On July 11, 2001, the United States Postal Service (USPS) published a proposed rule on *Delivery of Mail to a Commercial Mail Receiving Agency* in the Federal Register, Vol. 66, No. 133, p. 36224. The proposed rule revises USPS' regulations that govern procedures for delivery of an addressee's mail to a commercial mail receiving agency (CMRA).

The proposed regulation removes the monetary requirement for defining an Office Business Center (OBC) and sets forth procedures for identifying when an OBC or part of its operation is considered a CMRA for purposes of complying with the CMRA regulations. Specifically, under the proposed regulation, an OBC customer is considered to be a CMRA if its contract with the OBC provides for mail service only or mail along with other business services without regard to occupancy. Moreover, an OBC customer receiving mail at the OBC address is considered to be a CMRA customer for postal purposes if each of the following is true:

- (1) The customer's written agreement with the OBC does not provide for the full-time use of one or more of the private offices within the OBC facility; and
- (2) The customer's written agreement with the OBC does not provide all of the following:
 - (A) The use of one or more of the private offices within the OBC facility for at least 16 hours per month;
 - (B) Full-time receptionist service and live personal telephone answering service during normal business hours and voice mail service after hours;
 - (C) A listing in the office directory, if available, in the building in which the OBC is located; and

(D) Use of conference rooms and other business services on demand, such as secretarial services, word processing, administrative services, meeting planning, travel arrangements, and videoconferencing.

The CMRA Rule

On March 25, 1999, USPS published a final rule on *Delivery of Mail to Commercial Mail Receiving Agencies* (CMRA) in the Federal Register, Vol. 64, No. 57, p. 14385. The rule required CMRA customers to use the abbreviation PMB in their addresses rather than other terms such as “suite,” “unit,” “apartment,” etc. It also required:

- 1) CMRA customers to provide an actual address to USPS on a PS Form 1583;
- 2) CMRA owners to verify and match information on an application for a private mailbox (PMB) with information provided on the PS Form 1583;
- 3) CMRA owners or managers and each addressee to complete and sign a PS Form 1583; and
- 4) CMRA owners to submit a quarterly report to USPS with the names of new customers, current customers, and customers terminated within the last 12 months.

On March 13, 2000, USPS published another proposed rule on *Delivery of Mail to Commercial Mail Receiving Agencies* in the Federal Register, Vol. 65, No. 49, p. 13258. The purpose of the proposal was to revise the requirement that private mailbox users use the term “PMB” in their addresses. The proposed rule amends the CMRA rule that was finalized in March 1999 by allowing CMRA users to use the “#” sign as an alternative to the PMB designator. The proposal also allows CMRA users to use three-line addresses.

On August 16, 2000, USPS published the final rule. Federal Register, Vol. 65, No. 159, p. 49917. The final rule requires all CMRA users to use either “PMB” or the “#” sign in their addresses. All CMRA users must comply with the rule by August 26, 2001.

At the time that the rule was finalized, USPS asserted that the rule was necessary to address mail fraud. The only evidence that fraud was occurring at CMRAs was anecdotal. There were no studies to indicate the rate of fraud or support the necessity of the rule. There was also no indication that USPS had considered the impact of the rule on competition.

On April 9, 2001, the USPS Office of Inspector General (OIG) issued a report on USPS’ rulemaking process in the CMRA rule. The OIG found that USPS did not “demonstrate the need for regulatory change by presenting statistical or scientific data to support claims of mail fraud conducted through private mailboxes.” Moreover, the regulations “did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private boxholders, or consider alternatives to revising the rules.” The OIG also found that the rules represented significant changes that could cost receiving agencies and their customers millions of dollars.

The Office of Advocacy's Involvement in the Issue

Concerned small business owners brought the CMRA issue to Advocacy's attention in May 1999. Since that time, the Office of Advocacy has been actively involved in representing the concerns of small businesses in USPS' deliberations and regulatory process. Advocacy has held roundtables and conference calls with small businesses and their representatives; attended meetings with officials from USPS; and submitted comments on the issue to the Postmaster General. (See attached exhibits 1-3) In its letters, Advocacy raised several issues with USPS about the CMRA rule. These issues included:

- 1) the lack of data to support USPS' allegations of fraud at CMRAs;
- 2) whether USPS was using its monopolistic power to eliminate or reduce competition from the CMRA industry;
- 3) the discriminatory practices that were inherent in the regulation; and
- 4) the propriety of USPS promulgating a regulation that in effect institutionalized the contractual requirements of the largest CMRA competitor, Mailboxes Etc., and imposed it on non-Mailbox Etc. customers.

Advocacy's previous comments are incorporated by reference into this comment.

Requiring OBCs to Comply with the CMRA Rule Raises the Same Concerns Prevalent in the Promulgation of the CMRA Rule

Under the proposal, an OBC that is considered a CMRA for postal purposes would be required to comply with CMRA regulations such as the requirement that PMB or "®" sign be used in an address. Like the CMRA rule, there is no basis for requiring certain OBC customers to use a special term or symbol in an address. There is no evidence to suggest that OBC customers that fall within a certain definition are more likely to commit fraud than OBC users that do not fall within the definition. Likewise, there is no evidence to suggest that fraud occurs at OBCs at any greater rate than other addresses.

OBCs, like CMRAs, offer an alternative to the traditional USPS mailbox rental and traditional business practices. The OBC allows a home based business to select the level of services that it requires to fulfill its business needs. With today's technological advances, it may not be necessary to have secretarial services or a full time office space to be successful. Failure to utilize all of the options found in the traditional office is an indication of astute business planning, not fraud. To punish a business for only obtaining the services that it needs discriminates against smaller businesses that cannot afford a more extensive set-up.

As with the CMRA rule, USPS has not demonstrated the need for regulatory change or that the change will in any way curb fraud. It has merely made an arbitrary decision that customers who do not spend a certain amount of time in an office environment are engaging in fraudulent activities. To say that a customer is more likely to commit fraud because its OBC does not provide, for example, voice mail after hours is ludicrous.

As Advocacy stated in its letters dated October 20, 1999 and April 12, 2000, a regulation or administrative practice is valid unless it is (a) unreasonable or inappropriate or (b) plainly inconsistent with the statute. The Rockville Reminder, Inc. v. USPS, 480 F. 2d 4, 6 (2nd Cir., 1973). (See, Ex. 2 and 3) Requiring OBC customers to use ‘PMB’ or the ‘#’ sign in the address, without any evidence that the action will deter fraud, is unreasonable and inappropriate in that it places an unwarranted stigma on OBC users and places OBCs that offer less extensive services at a competitive disadvantage. Prior to implementing such a regulation, USPS should have evidence that there is a problem that needs to be addressed and some evidence of whether the proposed solution will address the particular problem. Here, USPS has neither. The only thing achieved by the requirement is the imposition of an arbitrary decision on OBC customers.

Before expanding the CMRA rule to include certain OBC customers, USPS should follow the findings of the OIG and perform some sort of study to determine if these regulations are indeed necessary and, if so, whether they are the proper manner for addressing the problem. By failing to do so, USPS is continuing to engage in an arbitrary and draconian rulemaking process.

If you have any questions, please feel free to contact me at (202) 205-6534. Thank you for the opportunity to comment on this proposal.

Sincerely,

Susan M. Walthall
Acting Chief Counsel
Office of Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation

Enclosures

